RECENT CASES

CONTRACTS—LIABILITY OF BUILDING CONTRACTOR FOR SOUNDNESS OF STRUCTURE—REIMBURSEMENT FROM VENDOR OF MATERIALS.—FLANNERY V. ST. LOUIS ARCHITECTURAL IRON CO. (1916) 185 N. W. (Mo.) 760.—The plaintiff, a contractor employed to erect a garage, purchased steel trusses from the defendant. In order to furnish the trusses in the lengths specified, the defendant welded short rods together, and delivered them to the plaintiff with a latent defect at the place of welding. Due to this defect the roof collapsed a few months after the completion of the building. The plaintiff reconstructed the roof at an expense of $268.55, and then sued the defendant on an implied warranty of the quality of the structural steel. *Held,* that the expenditure made by the plaintiff in the reconstruction of the roof must be regarded as voluntary on his part and the defendant need not reimburse the plaintiff for the expense incurred.

The court assumed, at the start, that the plaintiff was not liable to the owner of the building, since the defect was hidden and the plaintiff had performed his part in a workmanlike manner; and in so assuming, followed the case of *Wisconsin Brick Co. v. Hood* (1899) 67 Minn. 329 (bricks made from clay apparently suitable). While the above is the only direct authority, a strong analogy to the position of the plaintiff in the principal case is presented by that of manufacturers or vendors of articles, who are held impliedly to warrant their products, in part manufactured by them, sound and fit for the purpose for which they know they are intended. Williston, *Sales,* sec. 232. And this is so, even though the failure has been due to a latent defect. *Murray Iron Works Co. v. De Kalb Electric Co.* (1902) 103 Ill. App. 78; *Randall v. Newson* (1877) 2 Q. B. D. 102. Thus a heating plant must operate successfully. *Ideal Heating Co. v. Kramer* (1905) 127 Ia. 137. So a boiler in a tug-boat should be sound and free from defects, although they are discoverable only by actual use. *The Nimrod* (1905) 141 Fed. 215; *cf. MacPherson v. Buick Motor Co.* (1916) 111 N. E. (N. Y.) 1050; 25 YALE LAW JOURNAL, 679 (a defective machine assembled and sent out by defendant as manufacturer). By acceptance of the article, latent defects are not thereby waived. *Cannon v. Hunt* (1902) 116 Ga. 452; *Bagley v. Cleveland Rolling Mill Co.* (1884) 21 Fed. 159. Thus, if the reasoning of the above analogy were to establish the liability of the present plaintiff to the owner of the building, the present defendant could in turn be held liable for the defect in the material furnished by him. Injury caused by using warranted goods in manufacturing other articles is recoverable, unless the buyer was negligent or unreasonable in failing to discover the defects before using the goods. Williston, *Sales,* sec. 614. And it would not then be necessary to wait until suit by the owner of the building before bringing this action against the defendant. *Donald v. Guy* (1903) 127 Fed. 228; see also *Randall v. Raper* (1858) E. B. & E. 82.

A. S. B.

CONTRACTS—CONTRACT OF EMPLOYMENT—PERFORMANCE TO SATISFACTION.—HANAFORD V. STEVENS CO. (1916) 98 ATL. (R. I.) 209.—The plain-